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Supreme Court, U.S.
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No. (10) 07-708

In The

Supreme Court of the United States

Jeanette Ueda Collier,
Stephen Carroll Collier,
Petitioners,

v.

Dennis L. Parizek, individually,
Michael Walsh, individually, and
General Communications, Inc.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court of Appeals For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Jeanette Ueda Collier
Stephen Carroll Collier
In *Propria Persona*
c/o P.O. Box 104178
Anchorage, Alaska 99510
(907) 522-1776

Questions Presented

1. Whether this Court should exercise its Article III jurisdiction over this matter in the unique and exceptional circumstances presented and in light of the significant issues of public import.
2. Whether Public Law 80-773, Act of June 25, 1948, Ch.646, *Section 132*, 62 Stat. 895, is unconstitutional and *void* because *Section 132* consolidated constitutional and territorial courts within the several States thereby precluding the judicial Power of the United States in violation of Article III.
3. Whether Public Law 61-475, Act of March 3, 1911, Ch. 231, *Section 289*, 36 Stat 1167, is unconstitutional and *void* because *Section 289* abolished the Circuit Courts whereby Congress extinguished the judicial Power of the United States for appellate review in violation of Article III.
4. Whether the United States Court of Appeals Memo committing the Plaintiffs to monetary penalties while exercising no Article III judicial power is unconstitutional and *coram non judice* as it affirmed a legislative court's judgment over citizens of one of the several States domiciled within one of the several States.

Parties to the Proceedings

Representing The Individually Named Respondents:
John A. Nolet, Appellate Section
Department of Justice, Tax Division
P.O. Box 502
Washington, D.C. 20044
202-514-2935

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Opinions Below

The August 22, 2007 Order of the Circuit Court of Appeals (App. 1) denied a rehearing *en banc*. The July 11, 2007 Memorandum of the United States Court of Appeals For the Ninth Circuit (App. 2) is unpublished. The Order of the United States District Court ("USDC") (App. 3) was filed on Dec. 13, 2005.

Jurisdiction

The jurisdiction of this Court is invoked pursuant to Article III, section 1 of the Constitution of the United States and the Judiciary Act of 1789. The citizenship of the Plaintiffs is a citizen of one of the several States or United States of America pursuant to the Declaration of Independence. Citizenship of Defendant GCI is a citizen of the State of Alaska pursuant to Alaska Statutes; and, the Defendants Parizek and Walsh are citizens of the United States, being different than the Plaintiffs, pursuant to the Civil Rights Act of 1866, as amended ("CRA 1866").

Constitutional Provisions Involved

Article I, sec. 8, cl 9 . . . To constitute Tribunals inferior to the supreme Court;

Article I, sec. 8, cl 17 . . . To exercise exclusive Legislation in all Cases whatsoever, over such District ...

Article III, sec. 1, The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

Article III, sec. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States...

Statement of Facts

Petitioners filed suit to enforce their fundamental rights secured in the Constitution of the United States and Laws of the United States. They were denied due process of law by the United States District Court pursuant to the jurisdiction created by Public Law 80-773, Title 28, United States Code ("U.S.C."), *Section 132.* By virtue of Public Law 61-475, Title 28, U.S.C., sections 117 and *289* the United States Court of Appeals ("USCA") imposed sanctions against the Plaintiffs.

I. Article III Courts Established under Article I, section 8, clause 9

Congress enacted a Law of the United States on September 24, 1789, chapter 20, section 3, creating "District Court(s)" under the authority of Article III, section 2 with cognizance of all crimes and offences under the authority of the United States, *see* also 1 Stat. 76, s. 9. Congress additionally enacted section 1 Stat. 74, s.4 of the same Law to establish the "Circuit Court(s)" under authority of Article III section 2, *see* also 1 Stat. 78, s.11. These "inferior Courts" have never been created under any other authority other than "[t]he power given [to] Congress in Art.1, s.8, cl.9," *Glidden v. Zdanok*, 370 US 530, 543 (1962).

The courts arising under Article III are constitutional courts and exercise the judicial Power of the United States under the Constitution and

Laws of the United States as the supreme Law of the Land, see Article VI, clause 2.

According to *Ex Parte Bakelite*, 279 U.S. 438, 449(1929), "it long has been settled that article 3 does not express the full authority of Congress to create courts." There is a difference between inferior courts, "those established under the specific power given in section 2 of article 3 are called constitutional courts." These courts "can be invested with no other jurisdiction" and Congress is with no power to provide otherwise, *ibid.* A court established under article 3 may not issue "decisions which are advisory only, and so without force as judicial judgments, [as] may be laid on a legislative court," *supra.* at 454.

In judging whether a court is constitutional or legislative, "the true test lies in the power under which the court was created and in the jurisdiction conferred." *Ibid* at 459.

II. Circuit Courts Abolished and Judicial Power Transferred to District Courts

The original and only Circuit Courts exercising the judicial Power of the United States pursuant to Article III were "abolished" and their jurisdiction transferred to the District Courts of the United States on March 3, 1911 pursuant to Public Law 61-475, S.7031, 36 Stat. 1167, ch. 231, *Section 289.*

An appellate jurisdiction for USCA was initially created on Mar. 3, 1891 pursuant to 26 Stat. 826, ch.517. The jurisdiction of that court as explained in section 15 included "review [of] the judgments, orders, and decrees of the supreme courts of the several Territories as by this act they may have to review the judgments, orders, and decrees of the district court and circuit courts." This jurisdiction

was confirmed on March 3, 1911 pursuant to 36 Stat. 1131, ch.231, and recorded as Title 28, U.S.C., section 117, being courts thereinafter with limited and established appellate jurisdiction. On the same day, Congress abolished jurisdiction in the Circuit Courts of the United States that exercised judicial Power under Article III in *Section 289* of the same Act.

Currently the USCA exercise jurisdiction under 28 U.S.C. §1291, a limited jurisdiction reviewing adjudications from the USDCs and courts of the Territories and Insular Possessions under 28 U.S.C. §132.

III. District Courts Consolidated With Territorial Courts in 1948

The original District Courts of the United States exercising the judicial Power of the United States were combined and consolidated with courts of the territories and insular possessions on June 25, 1948 pursuant to Public Law 80-773, H.R. 3214, ch. 646, *Section 132*, 62 Stat. 895; presently recorded in Title 28, U.S.C., section 132, being consolidated courts to be known as the "United States District Court." The 1948 Reviser's Notes reports the consolidation of the courts at page 1732 of the Congressional Service Record ("CSR-80") for the 80th Congress, 2d Session.

Senate Report No. 1559, which accompanied H.R. 3214, described that the Reviser's Notes appended to the House Report No. 308, 80th Congress, 1st Session, explained in detail an analysis of sections constituting each chapter, the source of the law and the changes made in the course of the modernization and codification of the new Title 28 entitled "Judicial Code and Judiciary." It is well settled that the

Reviser's notes are authoritative in interpreting the Code, see *U.S. v. National City Lines*, 337 U.S. 78, 81(1949).

A review of CSR-80, page 1732, (App. 4) produces the Reviser's Notes for Title 28, Section 132 – "Creation and composition of district courts." It clearly states that the "section consolidates section 1 of title 28, U.S.C., 1940 ed., and section 641 of title 48, U.S.C., 1940 ed., with changes in phraseology necessary to effect the consolidation." (App. 5) The "Section 132 – Revised" continues to explain that subsection (c) is derived from section 641, which applied only to the Territory of Hawaii, and that "by extending it to all districts merely recognize[d] established practice."

The seven Statutes listed in the reviser's notes for *Section 132* includes four (4) citations regarding territorial "courts of a peculiar character and jurisdiction," *Hornbuckle v. Toombs*, 85 U.S. 648, 655 (1873), and three (3) citations regarding District Courts with Article 3 jurisdiction. (App. 6)

Upon the effectiveness of H.R. 3214 *Section 132*, on September 1, 1948, the district courts for the districts of Hawaii and Puerto Rico became embraced in the term "district courts of the United States" for purposes of the definitive section 451 of Title 28. The definition of "court of the United States" included the "district courts constituted by chapter 5 within this title." Title 28, Chapter 5 - District Courts, included the district court of Washington, D.C., see sec. 88 (CSR-80, page 1496), a court entirely created under the plenary municipal authority of congress under Article I, see *Palmore v. U.S.*, 411 U.S. 389, 405, 408(1973); *O'Donoghue v. U.S.*, 289 U.S. 516, 545-51(1933). *Cf.* The territorial district courts of Hawaii, sec. 91 at CSR-80, page 1498, and Puerto

Rico, section 119 at page 1513, were additionally created by congress under its plenary municipal authority.

Congress' attempt to clothe the territorial courts with Article III powers did not alter the factual effects of the title 28, *Section 132* unification by merely using "phraseology necessary to effect the consolidation." This Court has dealt with this subject conclusively as detailed *infra*.

REASONS FOR GRANTING THE PETITION

A. Exceptional Circumstances

This case potentially affects each and every citizen of the several States' ability to obtain a fair trial pursuant to the Fifth Amendment by challenging whether the USDC and USCA are constitutional courts under Article III within the several States of the Union or only legislative courts. The effects concern the integrity of the legislative and judicial branches and the fundamental issue of separation of powers.

The legal questions presented here are not "political questions" in themselves and they are resolvable by this Court exercising its Article III jurisdiction as they carry "significant political overtones" or "political implications" upon "'which depend public and private interests of vast magnitude.'" *INS v. Chadha*, 462 U.S. 919, 942-43(1983).

This case presents factors that compel exercise of this Court's Article III judicial power under the Constitution and the Judiciary Act of 1789: namely, the paramount interests involved: the momentous impact of the issues; and the preservation of the independence of the Judicial Branch of government.

See *Sunal v. Large*, 332 U.S. 174, 178-80 (1947) (exemplifying "exceptional circumstances"); *New York v. Eno*, 155 U.S. 89, 93-97 (1894) (explaining "exceptions" as a "case of urgency, involving the authority and operation of the government"). See also *Ex parte Hudgings*, 249 U.S. 378, 379-80 (1919) ("exception" standard to general rule prohibiting bypassing "other available sources of judicial power" and to determine if the case is "of such exceptional character" depends "upon an analysis of the merits").

A decision by this court will serve instruction to the lower federal courts as how to adjudicate cases once real parties are competent to bring a real Case in Law and Equity into the jurisdiction of an Article III court exercising the judicial Power of the United States when domiciled within one of the several States.

In Cheek v. United States, 498 U.S. 192, 199-202(1991) it was stated there must exist a definite law with a legal duty with parties cognizable in an Article III court. The Plaintiffs pled the legal duty and the competent parties to qualify the original case to be cognizable before a constitutional court.

1. The Constitutionality Of P.L.80-773, *Section 132* Affects All Federal Criminal And Civil Cases Since 1948

Petitioners are challenging Public Law 80-773, Act of June 25, 1948, Ch. 646, *Section 132*, 62 Stat. 695 on numerous constitutional grounds. The effects of the revision of 28 U.S.C. §132 in 1948 eliminated the independent constitutional courts having Article III judicial Power of the United States within the several States and supplanted it with administrative or legislative jurisdiction that originates pursuant to

Article IV, sec.3. This also holds true on the challenge of 36 Stat 1167, ch. 231, *Section 289* (App. 7) whereby the entire independent Article III Circuit Courts of the United States were abolished.

It is true that the federal district courts have only such jurisdiction as the Congress may give them, *Lockerty v. Phillips*, 319 U.S. 182(1942), but Congress is without the authority to eliminate the independent Article III judicial power established under the Constitution. In *Hayburn's Case*, 2 U.S. 408 (1792) it is stated that "neither the legislative nor the executive branches, can constitutionally assign to the judicial any duties, but such as are properly judicial, and to be performed in a judicial manner." The revision of *Section 132* in Public Law 80-773 directed the district courts within the several States to exercise legislative or administrative duties, *infra.*, and such a shift of judicial power violates "a principle important to freedom, that in government, the judicial should be distinct from, and independent of, the legislative department," *ibid* at 410.

This matter directly affects not only the citizens of wrongful prosecution with results of incarceration and/or fines but also affects the very legitimacy of this country's legal system within a Constitutional Republic. Collateral effects, such as, loss of property rights, loss of right to vote, to sit on juries and to pursue life, liberty and happiness are also involved. This exceeds the "exceptional circumstances" of any petition for writ of certiorari or writ of habeas corpus heard by this Court.

B. Public Law 80-773, *Section 132* Is Unconstitutional and Void because *Section 132* Consolidated Courts in Violation of Article III.

This case presents a profoundly significant issue of the constitutionality of an act of Congress concerning "the public importance of the question presented," *Pocket Veto Case*, 279 U.S. 655, 673(1929).

P.L. 80-773, *Section 132* consolidated two inherently opposed court jurisdictions and renamed the result the "United States District Court." This newly renamed court no longer exercised the judicial Power of the United States from the Constitution arising under Article III thereby removing it as an independent court of the judicial branch. Attempts to clothe courts exactly like the USDC, a legislative Article IV court, with Article III powers has been adjudicated by this Court on numerous occasions.

A territorial, i.e. legislative, court *is not* one of those mentioned in article 3 of the constitution declaring that the judicial power of the United States shall be vested in one supreme court, and in such inferior courts as congress may from time to time establish, *McAllister v. U.S.*, 141 U.S. 174(1891). The court said that "Congress must not only ordain and establish *inferior courts within a state*, and prescribe their jurisdiction" . . . "before they can be invested with any portion of the judicial power of the Union" and with regard to courts in territories that "[t]hese courts, then, are not constitutional courts, in which the judicial power conferred by the constitution on the general government can be deposited. *They are incapable of receiving it.* They are legislative courts...," *ibid* at 181 (emphasis

added). "There is no exception to this rule in the constitution", *ibid* at 182.

The jurisdiction within territorial courts exercises no part of the judicial Power of the United States conferred by the constitution. The courts created under the constitution and existing in the states are distinguished from those created by congress and existing in the territories. "The courts are the legislative courts of the territory, created in virtue of the clause which authorizes congress to make all needful rules and regulations respecting the territories belonging to the United States," *ibid at* 183 summarizing *American Insurance Co. v. Canter*, 26 U.S. 511(1828). It is "settled that courts in the territories, created under the plenary municipal authority that congress possesses over the territories of the United States, are not courts of the United States created under the authority conferred by that article [3]", *McAllister* at 184.

Courts established for territories and insular possessions under Article IV, section 3 *cannot* be combined with courts established under Article 3, section 2 and still exercise the judicial Power of the United States, see *Bakelite supra*.

In *O'Donoghue at 532*, the often cited statement of Chief Justice Marshal is the core issue of the bright line that the founders of our constitutional Republic understood that if Congress was able to commingle its administrative issues of either Article I or Article IV courts wherein they have plenary municipal authority with the constitutional courts specifically and unequivocally secured in Article III, the people of the United States would have surrendered their independent judiciary.

> "'The Judicial Department comes home in its effects to every man's fireside; it passes on

> his property, his reputation, his life, his all. Is it not, to the last degree important, that he should be rendered perfectly and completely independent, with nothing to influence or control him but God and his conscience? . . . I have always thought, from my earliest youth till now, that the greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent Judiciary.'
>
> In a very early period of our history, it was said, in words as true today as they were then, that 'if they (the people) value and wish to preserve their Constitution, they ought never to surrender the independence of their judges.'"

It is *well settled* that legislative or administrative courts are incapable of receiving Article III judicial Power of the United States *either directly or by appeal* in the several States and therefore they cannot be constitutional courts. See *Keller v. Potomac Electric*, 261 U.S. 428, 444(1923) citing *Hayburn's Case*, 2 Dall. 410(1792); *U.S. v. Ferreira*, 13 How. 40, 52 (1851); *Muskrat v. U.S.*, 219 U.S. 346, 360-61 (1911); *Buckley v. Valeo*, 424 U.S. 1, 123(1976); *Glidden v. Zdanok*, 370 U.S. 530, 579-83(1962); *Postum Cereal v. California Fig Nut*, 272 U.S. 693, 700(1927); *Federal Radio Commission v. G.E.*, 281 U.S. 464, 469(1930); *American Insurance, supra at* 546 and *O'Donoghue, supra. at 536*

In *Northern Pipeline Construction Co. v. Marathon Pipe Line*, 458 U.S. 50 (1982) it was *held* that

> "*Congress does not have the same power to create adjuncts to adjudicate constitutionally recognized rights* and state-created rights as it

does to adjudicate rights that it creates." *Ibid* at 60 (emphasis added). "In sum, our Constitution unambiguously enunciates a fundamental principle -- that the "judicial Power of the United States" must be reposed in an independent Judiciary."

Ibid at 62, the Court identified "[r]eferring to our precedents upholding the validity of "legislative courts," . . . suggest that "the plenary grants of power in Article I permit Congress to establish non-Article III tribunals in 'specialized areas having particularized needs and warranting distinctive treatment'" citing *Palmore, supra. at 408. Ibid in Northern Pipeline at 75,*

> "Thus our reference in Palmore to *"specialized areas having particularized needs"* referred *only to geographic areas*, such as the *District of Columbia or territories outside the States of the Federal Union.* In light of the clear commands of Art. III, nothing held or said in Palmore can be taken to mean that in every area in which Congress may legislate, it may also create non-Art. III courts with Art. III powers." (emphasis added)

Ibid in *Northern Pipeline* at 80-81,

> "Together these cases establish two principles that aid us in determining the extent to which Congress may constitutionally vest traditionally judicial functions in non-Art. III officers. First, it is clear that when *Congress creates a substantive federal right*, it possesses substantial discretion to prescribe the manner in which that right may be adjudicated--including the assignment to an adjunct of some functions historically performed by judges. Thus *Crowell* recognized that Art. III

> does not require "all determinations of fact [to] be made by judges," 285 U.S., at 51; with respect to congressionally created rights, some factual determinations may be made by a specialized factfinding tribunal designed by Congress, without constitutional bar, id., at 54. Second, the functions of the adjunct must be limited in such a way that "the essential attributes" of judicial power are retained in the Art. III court." (emphasis added) See also *ibid at 82-83.*

Plaintiffs do not disagree with *Northern Pipeline at 80, supra.*, when Congress creates a federal right, all access to any remedy can be denied as is held in *U.S. v. Babcock*, 250 U.S. 328, 331(1918), '[t]he United States, when it creates right in individuals against itself, is under no obligation to provide a remedy through the courts." It may also limit the individual to administrative remedies, see *Tutan v. U.S.*, 270 U.S. 568, 576(1925).

But within the several States the creation of a "federal right" does not and should not support the demise of all Article III courts exercising the judicial Power of the United States in the several States.

In *Northern Pipeline, supra. at 82*, "Indeed, the validity of this proposition was expressly denied in Crowell, when the Court rejected "the untenable assumption that the constitutional courts may be deprived in all cases of the determination of facts upon evidence even though a constitutional right may be involved."" *Ibid at 84; "No comparable justification exists, however, when the right being adjudicated is not of congressional creation."* (emphasis added)

In *Crowell v. Benson*, 285 U.S. 22 (1932) the Court pronounced

> "In *cases brought to enforce constitutional rights*, the judicial power of the United States *necessarily extends to the independent determination of all questions, both of fact and law*, necessary to the performance of that supreme function. The case of confiscation is illustrative, the ultimate conclusion almost invariably depending upon the decisions of questions of fact. This court has held the owner to be entitled to 'a fair opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts.'"(emphasis in original)

Ibid at 64, "We think that the essential independence of the exercise of the judicial power of the United States, in the enforcement of *constitutional rights requires* that the federal court should determine such an issue upon its *own record and the facts elicited before it.*" See also *U.S. v. Raddatz*, 447 U.S. 667, 682(1980).

The Plaintiffs have *never*, after extreme due diligence, been allowed to present or dispute one fact or issue under the Laws of the United States in any Article III court of the United States to date. As stated in *Raddatz, supra.*, "Generally, the ultimate factfinder in administrative proceedings is a commission or board, and *such trier has not heard the witnesses testify.*" (emphasis added). Plaintiffs agree that in an administrative proceeding witnesses may not be required to testify, but this has no application to Cases under Article III, which the Plaintiffs are qualified to have adjudicated and are entitled to.

"Congress may not give away Article III "judicial" power to any Article I judge," see *Clinton v. City of New York*, 524 U.S. 417, 482 (1998).

When constitutional courts are consolidated with administrative courts, the results are legislative courts exercising the plenary municipal authority of Congress, see *Ex Parte Bakelite, supra. at 449.* This action violates the authority inherent in Article III, because the judicial power of the United States as established within independent courts for the District Courts of the United States, was extinguished by *Section 132* and displaced with courts of limited legislative municipal authority, i.e., the USDC.

In *Martin v. Hunter's Lessee*, 14 U.S. 304, 339(1816) and *The Moses Taylor*, 71 U.S. 411, 428-30(1866), it was adjudicated by this Court that *all* of the Article III judicial Power *must be vested in some court* by Congress and to withhold any judicial Power would defeat the Constitution and the separation of powers doctrine. See also *Eisentrager v. Forrestal*, 175 F.2d 961, 966(1949) and *Veith v. Jubelirer*, 541 U.S. 267, 277-78(2004). *A fortiori* the result of the H.R. 3214 consolidation in *Section 132* created a tribunal known as the United States District Court that precludes the existence of the District Court of the United States. The Article III judicial power independent of Congress has been legislated to be nonexistent or dormant and inaccessible to the *People of the United States* within the several States.

The historical significance of the term 'District Courts of the United States' "describes the constitutional courts created under article 3 of the Constitution," *Mookini v. U.S.*, 303 U.S. 201, 205(1938). And this Court has "often held that vesting a territorial court with jurisdiction similar to

that vested in the District Courts of the United States does not make it a 'District Court of the United States.'" *Id.*, (cites omitted).

This doctrine was statutorily established in the August 24, 1937 act of 50 Stat. 752, ch.754, s.5 and described the term "court of the United States." None of the references in that act, or as currently defined in 28 U.S.C. §451, include the exact term of "District Court of the United States." There is reference to the "District Court of the United States for the District of Columbia", which is obviously a court established under Article I. Instead, §451 references "courts of appeals, district courts constituted by chapter 5 of this title" and "[t]he terms "district court" and "district court of the United States" mean the courts constituted by chapter 5 of this title.""

It is important to note the lack of capital letters for proper nouns establishes that the "district court of the United States" is not the same term as 'District Courts of the United States.' Only the latter is created under Article III, section 2, see *Mookini*, *supra*. The former is a legislative or administrative court exercising Article IV, section 4 legislative powers. *A fortiori* the term "court of the United States" as defined today represents courts that do not exercise the judicial Power of the United States by authority of the United States under Article III.

Congress has not been delegated authority to remove the Article III judicial Power from the judiciary. In *Alden v. Maine*, 527 U.S. 706, 739 (1999) citing *Martin* at 326, "The Federal Government, by contrast, can claim no powers which are not granted to it by the constitution, and the powers actually granted must be as such as are expressly given, or given by necessary implication." Congress has impugned the separation of powers doctrine under

the Constitution and violated Article III by removing the independent judiciary from Government.

There being no Article III courts available to citizens of the several States means the judicial Power of the United States has been extracted and made inaccessible. What has occurred to justify no access to an Article III court in one of the several States?

1. Laws of Congress Exercised by Plenary Municipal Authority

Congress enacts "laws of Congress" in the District, territories and possessions of the United States wherein Congress has plenary municipal authority acting in the capacity of one of the several States and the federal government. The source of the plenary power of Congress for "laws of Congress" is Article I for the District and Article IV for the territories.

Under the plenary power of Congress within the District, Congress can clothe courts that are deemed to possess the Article III judicial Power of the United States. See *Palmore* at 405, 408; *O'Donoghue at*, 545-547, 551. Outside of the District, Congress' special powers of Article I, Section 8, precludes the vesting of the judicial Power of the United States in inferior Courts of the United States, *O'Donoghue at* 546. "The laws of Congress in respect to those matters do not extend into the territorial limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government." *Caha v. United States*, 152 U.S. 211, 215(1894).

In the territories, Congress under the "laws of Congress" can create legislative courts under Article

IV and even clothe these courts with the appearance of Article III courts of the United States exercising the judicial Power of the United States, but they are not Courts of the United States arising under Article III as these territorial courts are incapable of receiving the judicial Power of the United States. In the territories, Congress exercises the combined powers of a general and of a state government. See *Palmore at* 398-399; *O'Donoghue at* 539; and, *American Insurance Co. at* 546.

In *O'Donoghue, supra. at 530,*

> "The Constitution, in distributing the powers of the government, creates three distinct and separate departments — the legislative, the executive, and the judicial. This separation is not merely a matter of convenience or of governmental mechanism. Its object is basic and vital . . . namely, to preclude a commingling of these essentially different powers of government in the same hands."

As a matter of law concerning constitutional secured rights both the issues of law and facts must be adjudicated in constitutional courts arising under Article III. With the law and the corresponding legal duty never having been disclosed to restrain the Plaintiffs and the facts not having been determined in a constitutional court for or against them flows *a fortiori* that the Plaintiffs are being subjected to only "laws of Congress" wherein Congress has plenary municipal power in only certain geographical areas confined to the District, territories and possessions by a legislative court, i.e., an administrative court, under Article I or a territorial court under Article IV. These courts can withhold access to constitutional courts and even restrain any remedy. But the

Plaintiffs are not domiciled in the District, a territory or an insular possession.

The only source of the "judicial Power of the United States" is the Constitution of the United States and it has been well settled that the "The Constitution must have given to the court the capacity to take it, *and an act of Congress must have supplied it....* " (emphasis in original) as pronounced in *Finley v. U.S.*, 490 U.S. 545, 547-48(1989).

The Title 28 U.S.C. *Section 132* is in opposition to the judicial Power of the United States under Article III as Congress has in §132(c) posited a judicial power as the "judicial power of a district court", which is only a statutory judicial power granted by Congress and not from the Constitution as its source. The judicial power from §132(c) is not equal to the mandate of judicial Power of the United States arising under Article III. The legislative court judicial power is controlled as stated in §132(c) by a combination of "by law" or "rule" or "order of court." The "by law" and "rule" originates from "Laws of Congress" exercising its powers for the District, territories or insular possessions. Contrast this to "Laws of the United States" whereby Congress exercises its powers of the United States within any of the several States. An "order of court" issues under the "judicial power of a district court" established under Article I or Article IV for the District, a territory or an insular possession. This violates the separation of power doctrine in which no Branch of Government can control another branch within the several States. *Section 132* establishes Congress as controlling the consolidated USDC because the territorial courts cannot receive nor share Article III powers. And Article III courts

cannot share powers with any other court when adjudicating within one of the several States.

2. United States District Court Exercises Federal Question Jurisdiction

"The general jurisdiction of United States District Courts is set forth in T.28 U.S.C. Chap. 85 (§§ 1331 to 1360)," see *Eastern Metals Co. v. Martin*, 191 F.Supp. 245, 248 (1960).

It was not until the period following the Civil War that Congress, in order to protect newly created federal civil rights and in the flush of nationalist sentiment, first created federal jurisdiction in civil rights cases in the Act of April 9, 1866, § 3, 14 Stat, 27; and, the Act of May 31, 1870, § 8, 16 Stat. 142; and, the Act of February 28, 1871, § 15, 16 Stat. 438; and, the Act of April 20, 1871, §§ 2, 6, 17 Stat. 14, 15; and, then in 1875 conferred general federal question jurisdiction on the lower federal courts in the Act of March 3, 1875, § 1, 18 Stat. 470, now 28 U.S.C. § 1331(a).

Congress entered into the public record via a "Law of Congress" the federal question jurisdiction with 18 Stat 470, ch.137. Within section 1 of the act, the parties bringing suit in a controversy between citizens of a State and aliens was changed, whereby the term "an alien is a party" was substituted with "foreign states, citizens, or subjects". This allowed the statutory illusion created by Congress of the "citizen of the United States" into the constitutional courts arising under Article III. Another problem that was satisfied arose shortly after the passage of 18 Stat. 470 allowed another set of fictional entities into the constitutional courts, being corporations chartered by Congress then could seek relief in the

federal courts. Several acts later the legislature deprived national banks and others that were chartered by Congress the right to sue based on federal incorporation.

In *Gully v. First Nat. Bank in Meridian*, 299 U.S. 109, 112 (1936)

> "To bring a case within the statute, a right or immunity created by the Constitution or *laws of the United States* must be an element, and an essential one, of the plaintiff's cause of action. . . . The right or immunity must be such that it will be supported if the Constitution or *laws of the United States* are given one construction or effect, and defeated if they receive another. . . A genuine and present controversy, not merely a possible or conjectural one, must exist with reference thereto. . . ."

The outcome of the Plaintiffs' Case with regard to their political status and issues pled for a "District Court of the United States" have certainly been defeated as adjudicated by the legislative or administrative courts under the titles of USDC and Circuit Court of Appeals.

In *Maine v. Thiboutot*, 448 U.S. 1 (1980) discussing 42 U.S.C. § 1983 the court *held* the phrase "secured by the Constitution *and laws*", which was a new statement different that "Laws of the United States." The issues were concerning *benefits* under the Social Security Act, "and laws" and the Civil Rights Act of 1871 which amended the Civil Rights Act of 1866, see *Maine, at* 2-9. The term "and laws" isn't addressed specifically as to its meaning versus "Laws of the United States." But only Laws of the United States arising under Article VI are the supreme Laws of the Land in the several States

having application to the Plaintiffs. Also, all Laws of the United States must be adjudicated in Article III courts of the United States and not in Article I or Article IV courts. "Laws of Congress" can be adjudicated under Article I courts commingled with Article III judicial Power only in the District. Additionally, the laws of Congress can be adjudicated in Article IV courts in the territories and possessions, but cannot be commingled with Article III courts within the several States. Consequently, Article III courts in the several States do not adjudicate laws of Congress, but only Laws of the United States made in pursuant to Article VI of the Constitution of the United States.

We have learned from holdings of this Court that the USDC is an Article IV, section 3, court whereby it exercises jurisdiction over individuals who are under control of the plenary municipal authority of Congress somehow. This municipal authority cannot exist in any one of the several States under a Constitutional Republic and yet the USDC is present in every district of the geographical United States within the several States. The *People*, or citizens with privileges and immunities protected under Article IV, section 2, have no recourse today to access an Article III court for all Cases in Law and Equity because they simply do not exist. Therefore, some nexus must be in effect to justify a federal court system that restricts access to Article III jurisdiction within the several States.

a. Benefits Against the United States Established in 1935

The Social Security Act ("SSA") was approved on August 14, 1935, Public Law No. 271, H. R. 7260, 49

Stat 620, ch.531, as amended. This act was "To provide ... benefits" and provide for the program's funding via raising revenue through payroll deductions by employers. The program invariably requires qualifications by its subscribers that include, amongst others, an allegiance to a specific class of political status. The class of citizenship is citizen of the United States, as established in CRA 1866, sworn to under penalties of perjury.

Congress may create rights in individuals against itself and establish special tribunals aside from the courts, to administer and enforce the rights created. It is self-evident that a benefit from the United States government is a right against the United States. As stated earlier in *Babcock* and worth repeating here, 'The United States, when it creates right in individuals against itself, is under no obligation to provide a remedy through the courts." It may also limit the individual to administrative remedies when right against the U.S. are claimed, see *Tutan, supra.*

Subscribers to the SSA program do not obtain full disclosure of the consequences of their registration. There is no disclosure to the citizen that he or she is creating a right against the United States upon registration, if indeed the subscriber is of legal age at the time of application.

The result of this benefit program is an essential element as to how the federal court system can be justified in not having Article III jurisdiction present and accessible. The applicants are mandated to an oath under penalties of perjury that is conflated with establishing a right against the United States. As Congress presumably had full knowledge of all the legal ramifications after enactment of the SSA, it was simple progression to implement in 1948 a

consolidation of Article III and Article IV courts under U.S.C., Title 28, *Section 132*. The ensuing administrative court system under Article IV, section 3, would not be illegal if the general public was not qualified to gain access to the Article III courts.

Plaintiffs were born with a birthright, see *Inglis v. Snug Harbour*, 28 U.S. 99, 141-42(1830), that is different than that required by a penalties of perjury oath in the SSA application. They are not subscribers registered by their true names consisting of Christian names and surname with each first letter capitalized and the rest of the letters lower case, see Government Style Manual, 2000 ed., Chapter 3, section 3.2 and Oxford English Dictionary, volume VIII, listing *Proper*: name. There are no documents in effect whereby they have sworn under oath to be a citizen of the United States pursuant to CRA 1866. The Plaintiffs are not claiming to adjudicate any "federally created rights", i.e. benefits.

Plaintiff's political status is that of a citizen of the United States of America and posited in the public record. This differs from the statutory grant of citizenship from Congress under the CRA 1866.

b. Citizens of the United States Established in 1866

The Civil Rights Act of April 9, 1866, 14 Stat 27, ch.31, 39th Congress, Session 1, section 1, defined who are citizens of the United States and "their rights and obligations" "in every State and Territory." Section 3 describes that the district courts and circuit courts of the United States have cognizance of all causes, civil and criminal, affecting

persons who cannot enforce their rights secured in the first section of the act at the state court level.

The statutory rights granted by Congress to these individuals were to confer the status of citizenship upon a class of persons incapable of becoming citizens of the United States due to slavery. CRA 1866 was not put into effect by the 14th Amendment to affect those citizens already with a birthright to the Declaration of Independence, "No white person born within the limits of the United States, and subject to their jurisdiction, or born without those limits, and subsequently naturalized under their laws, owes the status of citizenship to the recent amendments [13th, 14th and 15th] to the Federal Constitution." See *Van Valkenburg v. Brown*, 43 Cal. 43, 44(1872). And the 14th Amendment "furnish[ed] a new basis of Federal numbers in the State, upon which a new apportionment of representation in Congress is to follow."

Reference to the term "white citizens" is found today in Title 42, section 1981, section 1982 and section 1988 arising under Revised Statutes of 1878 Title XXIV, - Statement of equal rights, where such statutory rights granted to persons shall be available "as is enjoyed by white citizens ...". All of the Civil Rights Acts, as amended, are posited in Title 42, where all "citizen[s] of the United States" are allowed to enter the Article I & IV courts under the cover of the "federal question" statutes first enacted in 1875, *supra*. This has no application to the citizens of the several States, being the founders of the Republic with birthrights established by birth. Citizens of one of the several States or by naturalization as a "citizen of the United States of America" thereby becoming a citizen of one of the several States, can only have their rights adjudicated in courts

established under Article III and none other unless they accept a benefit from the United States creating a right against the United States. The Plaintiffs have no right against the United States in effect.

It is held in the Declaration of Independence that all men "are endowed by their Creator with certain unalienable Rights" and not granted rights by congressional statute. The Constitution affirms this principle in Article IV, section 2 that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." The power of naturalization pursuant to Article I, section 8, is to make citizens of the respective States, see Ex Parte *Knowles*, 5 Cal. 300 (1855), and a

> "citizen of any one of the States of the Union, is held to be, and called a citizen of the United States, although technically and abstractly there is no such thing. To conceive a citizen of the United States who is not a citizen of some one of the States, is totally foreign to the idea, and inconsistent with the proper construction and common understanding of the expression as used in the Constitution,"

ibid at 302. The California Supreme Court continued with "a distinction both in name and privileges is made to exist between citizens of the United States *ex vi termini*, and citizens of the respective States. To the former no privileges or immunities are granted;" *ibid* at 304.

By a law of Congress, *statutory* rights were granted to citizens of the United States that are distinct from those inalienable rights of a citizen of one of the several States, *Madden v. Kentucky*, 309 U.S. 83, 90-91(1940); *U.S. v. Cruikshank*, 92 U.S. 542, 551-53(1875). In *Maxwell v. Dow*, 176 U.S. 581, 597-98(1900), "the privileges and immunities of

citizens of the United States do not necessarily include all the rights protected by the first eight amendments to the Federal Constitution against the powers of the Federal government." There are clear lines between the differences of these two classes of citizenship.

The Judiciary Act of 1789, under section 11, stipulated the real parties qualified to bring suit before the circuit courts of the United States exercising the judicial Power of the United States pursuant to Article III, those being, "an alien is a party, or the suit is between a citizen of the State where the suit is brought, and a citizen of another State." The Supreme Court has ruled that when there is a joint interest involved, each person competent to sue is entitled to be represented, see *Strawbridge v. Curtis*, 7 U.S. 267(1806). But, there was no provision for a citizen of the United States to be heard in an Article III court until the act of 18 Stat 470, ch.137 as discussed *supra*. Now, with the demise of all Article III courts within the several States the Plaintiffs, being citizens of the United States of America, have no remedy in the legislative courts exclusively in effect. The independence of the judiciary no longer exists as citizens of the United States, being subject to the plenary municipal power of Congress as it created their rights by statute, claim rights against the United States thereby enabling Congress to deny them remedies in Article III courts.

The Plaintiffs' citizenship status by birthright is a citizen of the United States of America and has never been controverted. Established in the public record of the Anchorage Recording District is the Certificate of Political Status, Citizenship and Allegiance No. 2007-067958-0. (App. 8)

C. Circuit Courts Abolished Pursuant to 36 Stat 1167, *Section 289* is Unconstitutional and *Void* because Congress Not Authorized to Make Obsolete Article III Courts

Public Law 61-475, S.7031, 36 Stat 1167, ch. 231, *Section 289* terminated the jurisdiction in Article III courts established under the Judiciary Act of 1789, section 11. The Circuit Courts' Article III jurisdiction was transferred to the "District Courts of the United States". This put into effect no appellate review at the circuit level with Article III judicial Power as the Circuit Courts of Appeals were an appellate jurisdiction established to review constitutional and territorial court judgments. The Circuit Court of Appeals is unable to be clothed with judicial Power pursuant to Article III, see *O'Donoghue and Bakelite, supra*..

A court is a creature of the Constitution and laws under which it exists and Congress has no power to remove the independent Article III judiciary from being one of the three branches of government. Congress has fixed where the judicial power shall be vested and it cannot be vested elsewhere, see Article III, section 1, nor should it be abolished.

As discussed previously and supported by *Alden* at 729, Congress "can claim no powers which are not granted to it by the constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication." There is no provision in the Constitution of the United States for the Congress to "abolish" an independent Article III court once established. The result of *Section 289* essentially made the Article 3 circuit courts

inaccessible to the *People* in violation of Article III and the separation of powers doctrine.

The Circuit Courts of Appeals as established *supra.*, are incapable of receiving Article III powers due to the fact that they are assigned appellate review of "the supreme courts of the several Territories." The fullest authority on this point is found in *Muskrat v. U.S.*, 219 U.S. 346(1911) and discussed in *Postum* at 700, stating the principle enforced is that the jurisdiction of Article 3 courts are

> "limited to cases and controversies in such form that the judicial power is capable of acting on them, and does not extend to an issue of constitutional law framed by Congress for the purpose of invoking the advice of this court without real parties or a real case, or to administrative or legislative issues or controversies."

This Court has stated that "[s]uch legislative or administrative jurisdiction, it is well settled, cannot be conferred on this court either directly or by appeal;" nor can it be conferred upon any other court established under Article 3, see *Keller v. Potomac Electric*, 261 U.S. 428, 444(1923). If the issue of citizenship rights granted by Congress under CRA 1866 is an issue of constitutional law framed by Congress and invokes no real party and no real case, then the Supreme Court has indeed full discretion to deny petitions of certiorari for citizens of the United States. However, when citizens not bound by such limited statutory rights seek access to Article III courts and there are none found existing, the Plaintiffs pray this Court to adjudicate the issues of law as they arise under the Constitution.

The Article 3 judicial branch of government cannot be manipulated as obsolete by congressional

decree. In *Bowsher v. Synar*, 478 US 714, 727(1986), quoting *Buckley v. Valeo*, 424 U.S. 1, 129(1976), the court stated that it has been a fear that the Legislative Branch "will aggrandize itself at the expense of the other two branches" and quoting *INS, supra*, at 951, that the "hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power, even to accomplish desirable objective, must be resisted." These principles are brought to consideration by the questions presented here.

D. Courts to Take Judicial Notice of Public Records

In *Jones v. United States*, 137 U.S. 202, 212, 214 (1890) it was held that public acts and public records are not a judicial issue, but a political question and therefore binds all judges even if not formally put into evidence.

Therefore, the Plaintiffs give Notice that all of the public record and acts are to be put into evidence even though not entered as such.

Conclusion

The law of 28 U.S.C. §132 created the USDC and prescribed its general powers determining the character of the court's judgment. As the USDC is a court of special and limited authority under Article IV there can be "no presumption of law in favor of [its] jurisdiction," see *Galpin v. Page*, 85 U.S. 350, 366 (1873). The Plaintiffs' pleadings were entered under an Article III jurisdiction for the District Court of the United States within one of the several States. Any presumption that the USDC had Article III

jurisdiction was restrained by sufficient evidence submitted under Affidavit and proper averment in the record. "Presumptions are only indulged to supply the absence of evidence or averments respecting the facts presumed. They have no place for consideration when the evidence is disclosed or the averment is made," *ibid.* The USDC judge used the 28 U.S.C. §132 jurisdiction and recast the Plaintiffs' pleadings to dismiss the Case based in part on a legislatively created remedy that has no bearing to the Plaintiffs, as the remedy is a Law of Congress to have application in administrative courts and denies the Plaintiffs of Due Process of Law under the Fifth Amendment.

Galpin emphasizes the importance of confining judicial decisions to their own territorial limits at 367,

> "'The authority of every judicial tribunal, and the obligation to obey it,' says Burge, in his Commentaries, 'are circumscribed by the limits of the territory in which it is established.' 'No sovereignty,' says Story, in his Conflict of Laws, 'can extend its process beyond its own territorial limits, to subject either persons or property to its judicial decisions. Every exertion of authority of this sort beyond this limit is a mere nullity, and incapable of binding such persons or property in any other tribunals."

It is a "general principle that a court created within and for a particular territory is bounded in the exercise of its powers by the limits of such territory." "Certainly it was not intended to legitimate an assumption of extra-territorial jurisdiction which would confound all distinctive principles of separate sovereignty." "The burden of establishing the

jurisdiction is cast upon the party who invokes the benefit or protection of the judgment or decree." *Ibid* at 367-68. The territorial or legislative powers of Article IV courts cannot issue legitimate decisions against a citizen of one of the several States within any of the several States.

When the Plaintiffs' complaint was recast into a foreign jurisdiction from that pled, a fundamental principle of the court was violated as "[r]ules of practice and procedure are devised to promote the ends of justice, not to defeat them." "Orderly rules of procedure do not require sacrifice of the rules of fundamental justice." *Hormel v. Helvering*, 312 U.S. 552, 557 (1941). The USDC judge continued to exercise the limited and special authority of his court to deny the Plaintiffs their Article III justice.

The Plaintiffs have the correct political status and citizen status of one of the citizens of the several States with their rights secured in the Constitution of the United States. The rights in this Case mandate a constitutional court arising under Article III exercising the judicial Power of the United States, precluding the legislative courts, i.e. territorial, courts of Article IV that cannot exist in the several States and are not capable of receiving the judicial Power of the United States from the Constitution under Article III.

The United States Court of Appeals, without judicial Power of the United States under Article III, imposed monetary penalties upon citizens of one of the several States disregarding the Plaintiffs' legal merits by adjudicating their constitutional rights as frivolous and "without merit." This Court has stated that the "appellate practice should not be applied where the obvious result would be a plain miscarriage of justice." *Ibid*. A plain miscarriage of

justice has been applied against the Plaintiffs by the lower legislative courts and Plaintiffs pray they be overturned based upon the Laws of the United States and the Constitution.

For these reasons, the Plaintiffs pray that this Court protects the independence of the Constitutional Republic's judicial system and grant certiorari to adjudicate the issues presented.

Plaintiffs affirm under oath and penalties of perjury that the facts stated or alleged herein are true and correct pursuant to sworn affidavit, see App. 9.

Stephen Collier and
Jeanette Collier, *Pro per*
P.O. Box 104178
Anchorage, Alaska 99510
907.522.1776

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JEANETTE UEDA COLLIER;
STEPHEN CARROLL COLLIER,
Plaintiffs-Appellants,

v.

DENNIS L. PARIZEK; et al.,
Defendants-Appellees.

No. 06-35017
D.C. No. CV-04-00206-JKS(A)
Alaska (Anchorage)
ORDER

Before: LEAVY, RYMER, and T.G. NELSON, Cir. Judges.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. See Fed. R. App. P. 35.

The petition for rehearing en banc is denied.

No further filings will be accepted in this closed appeal.

FILED
JUN 11 2007
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JEANETTE UEDA COLLIER;
STEPHEN CARROLL COLLIER,
Plaintiffs-Appellants,

v.

DENNIS L. PARIZEK; et al.,
Defendants-Appellees.

No. 06-35017
D.C. No. CV-04-00206-JKS(A)
MEMORANDUM*
Appeal from the United States District Court
For the District of Alaska
James K. Singleton, Chief Judge, Presiding
Submitted June 5, 2007**

Before: LEAVY, RYMER, and T.G. NELSON, Cir. Judges.

Jeanette Ueda Collier and Stephen Carroll Collier appeal pro se from the district court's order dismissing their action for injunctive relief, alleging that employees of the Internal Revenue Service and Mr. Collier's employer instituted improper levy actions against them. We have jurisdiction under 28 U.S.C. §1291. After de novo review, *Elias v. Connett*, 908 F.2d 521, 523 (9th Cir.1990), we affirm.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The district court properly dismissed the Colliers' action as barred by the Anti-Injunction Act. *See* 26 U.S.C. § 7421(a), The Colliers offer no basis for concluding that their claims against the government's levy actions fall into the judicial exception to the Anti-Injunction Act. *See Elias*, 908 F.2d at 525 (requiring taxpayer to demonstrate that the government cannot ultimately prevail on the merits and that the taxpayer will suffer irreparable injury without injunctive relief).

Because Mr. Collier's claims against his employer are based on withholding actions it took pursuant to mandatory legal duties, the district court also properly dismissed those claims. *See* 26 U.S.C. § 6332 (requiring party in possession of property subject to levy to surrender such property); *see also Bright v. Bechtel Petroleum, Inc.*, 780 F.2d 766, 770 (9th Cir. 1986)(holding that suit against employer for withholding taxes is barred by Anti-Injunction Act).

The Colliers' remaining contentions lack merit.

Because the arguments raised in the Colliers' appeal are frivolous, we grant the government's motion for sanctions, and we award sanctions in the amount of $4,000. See Fed. R. App. P. 38; *Grimes v. Comm'r*, 806 F.2d 1451, 1454 (9th Cir. 1986) (per curiam). For the same reason, we grant Appellee General Communications, Inc.'s motion for sanctions in the amount of $2,776.

AFFIRMED.

FILED
DEC 13 2005
United States District Court
District of Alaska
By /s/ JN Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JEANETTE UEDA COLLIER and
STEPHEN CARROLL COLLIER,
Plaintiffs,

vs.

DENNIS L. PARIZEK, MICHAEL WALSH, and
GENERAL COMMUNICATIONS , INC.,
Defendants.

Case No. A05-206 CV (JKS)

ORDER

Jeanette Ueda Collier and Stephen Carroll Collier (collectively "Collier" or "the Colliers") sue Dennis L. Parizek and Michael Walsh alleging that Parizek and Walsh acted in excess of their authority in connection with filing tax liens against Collier's wages and enforcing those liens. Collier also sues General Communications, Inc. ("GCI"), Collier's alleged employer, arguing that GCI has honored the liens and transferred Collier's funds to the government despite knowledge that the liens are invalid. The Colliers seek an injunction and Defendants have moved to dismiss. There are a number of other pending motions that will also be addressed in this order. The Court has carefully reviewed the record and concludes that oral argument would not be helpful. See D.AK. LR 7.2(a)(3). The Court has already issued orders at Docket Nos. 3, 9, 28, and 49. Additionally the Court

has issued a number of orders in the related case of *Collier v. United States*, et al., No. A03-0251 CV (JKS), which is on appeal to the Ninth Circuit and which addresses some of the same issues.

Collier moves at docket no. 54 for reconsideration of the Court's order at docket no. 49. It is clear from this motion and others that Collier does not understand federal practice and should retain an attorney skilled in tax law to assist him. A judge can only go so far in attempting to explain the law to a litigant. Collier argues that the Court has misunderstood his carefully crafted complaint as a dispute about tax liens and their enforcement. Collier argues that this case is about IRS employees acting ultra vires without the necessary authorization in valid regulations. Collier misunderstands the working of equity. It is possible that within the District of Alaska numerous federal, state and local officials are engaging in ultra vires acts. In order to have standing to seek an injunction directing a government employee to obey the law a litigant must show that he has been personally injured by an ultra vires act before a court may consider an injunction. If the court finds that an ultra vires act will cause a specific injury in the futures, then the court may enjoin the causing of the harm, but the injunction must be narrowly drawn to address only the proven injury. In this case the only injury Collier points to is what he contends to be Parizek and Walsh's efforts to collect taxes from him. The Court is not amending the Colliers' complaint. It seeks only to understand the complaint. The motion for reconsideration will be denied.

The Colliers move for a preliminary injunction at docket no. 6, renewed at docket no. 21. The motion is opposed and the Colliers have replied.

Docket Nos. 24; 31. The Colliers argue that a lawyer from the Department of Justice has no standing to appear and file pleadings on behalf of Parizek and Walsh. The Court ahs addressed and rejected this argument. *See* Docket No. 49 (Order). In its earlier orders that Court pointed out that the harm Collier is allegedly suffering is the diversion of his wages to the government under circumstances that he claims is without the requisite statutory and regulatory authority. The Court has earlier indicated that it cannot grant an injunction if the plaintiff has an adequate remedy at law. A remedy is adequate if it addresses the plaintiff's concerns and either prevents injury or provides damages for injuries previously suffered. In this case the Colliers make it clear that they are seeking only an injunction, not damages. Thus an adequate remedy would be one that enabled them to prevent IRS employees from garnishing their wages unless and until those agents acted in conformity with the law. It appears that a taxpayer who claims that his wages are being improperly garnished by IRS employees who are not complying with the law has an adequate remedy under 28 U.S.C. § 2410. Section 2410 cannot be used to challenge the merits of a tax assessment. That must be done in Tax Court or after payment of all taxes in a refund suit in this Court. The Colliers stress that they are not challenging any tax assessment or their underlying tax liability in this action. Rather they are challenging the procedures used – or not used – by Parizek and Walsh to collect. Section 2410 provides a remedy for such a claim. *See Huff v. United States*, 10 F.3d 1440 (9th Cir 1993); *Elias v. Connett*, 908 F.2d 521 (9th Cir 1990). Therefore the motions for preliminary injunction will be denied.

GCI moves to dismiss on the grounds that Collier cannot state a claim against it in this action. Docket Nos. 44 (Mot.); 48(Opp'n); 52 (Reply). GCI points out that it is protected by law against claims by its employees that it has wrongfully honored IRS liens. The Colliers seem to argue that where an injunction, rather than damages, is sought and the collection efforts of IRS employees are void and not just voidable, and the agents are sued in their individual capacities, the Court may enjoin an employer from honoring such an invalid lien. The Colliers are incorrect. Even if they were right, the argument would not avail them in this action because, as explained above, they have a number of adequate remedies at law. Because the Colliers have an adequate remedy at law, this Court lacks "equitable jurisdiction" since the absence of an adequate remedy at law is a prerequisite for an injunction. The motion to dismiss by GCI will be granted.

Parizek and Walsh have also filed a motion to dismiss. Docket Nos. 26 (Mot.); 32(Opp'n); see also Docket Nos. 45;49 (addressing and rejecting the Colliers' motion for sanctions). The government has advanced a number of grounds for dismissal. There is some merit in all of them. The Court will proceed on the clearest ground for granting dismissal. As previously stated, the Colliers seek only equity, not damages. The Court cannot grant an injunction if the Colliers have an adequate remedy at law because the absence of an adequate remedy at law is a prerequisite for equitable jurisdiction. The issue is equitable jurisdiction – not subject matter jurisdiction or personal jurisdiction. The Court lacks equitable jurisdiction in this case. It therefore must

be dismissed. The Court will therefore grant Parizek and Walsh's motion to dismiss.

Having denied the motion for a preliminary injunction and granted the motions to dismiss the question arises whether the Court should dismiss the Colliers' complaint with leave to amend or dismiss the action. In order to dismiss the action the Court must find that the facts alleged could never provide a basis for the relief that the Colliers desire. The Court will make that finding. The Colliers have made it clear that they do not view this case as directed at their tax liability. They do not want to sue the United States. Action pursuant to 28 U.S.C. § 2410 would be an action against the United States challenging the procedures followed in collecting taxes. The Court will take the Colliers at their word and dismiss the action. However, this will be without prejudice to a future § 2410 claim brought within the applicable statute of limitations.

The Court has also considered alternate bases for jurisdicitoin and concludes that they are unavailable. See U.S.C. § 1346(b)(1), 2671 et seq.; *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Congress views disputes over the assessment and collection of income taxes as a sua generic and has therefore established very strict procedures governing litigation about the assessment and collection of taxes. The Colliers must avail themselves of those procedures. This Court lacks authority to expand upon the limited remedies Congress has provided.

Finally, GCI seeks sanctions against the Colliers for filing frivolous pleadings and an injunction identifying them as vexatious litigants and precluding them from filing any more actions in which GCI is named as a party on the ground that it

has honored IRS liens. The Court is not prepared to award sanctions or enter an injunction at this time. The Colliers desire an opportunity to present all of their issues to the Ninth Circuit Court of Appeals. With a final judgment in this case and with the earlier case already on appeal they will have the opportunity to do so. If the Ninth Circuit affirms and the Colliers continue to file actions, the Court will reconsider the question of whether they are vexatious litigants. On the other hand this case and the earlier case are now the "law of the case" as to the issues presented. They are final judgments binding on the Colliers under the doctrines of res judicata and collateral estoppel unless and until reversed by the Ninth Circuit. Should the Colliers file any further actions in this Court prior to a favorable ruling from the Ninth Circuit the Court will consider enjoining them from further proceedings where the proceedings are governed by res judicata and collateral estoppel.

IT IS THEREFORE ORDERED:

The motion for reconsideration at Docket No. 54 is DENIED. The motion for preliminary injunction at Docket Nos. 6 and 21 is DENIED. The motions to dismiss at Docket Nos. 44 and 26 are GRANTED. The motion for sanctions at Docket No. 43 is DENIED. The clerk shall enter judgment dismissing this action in its totality without prejudice only to a future action pursuant to 28 U.S.C. § 2410. The Court recognizes that the Colliers do not agree with its analysis. The Colliers will not be content until a judgment is rendered by the Ninth Circuit Court of Appeals. In order to speed the appellate process, the Court directs the clerk not to docket any motions for reconsideration, relief from

judgment, or to amend or correct the judgment from the Colliers.

Dated at Anchorage, Alaska, this 13 day of December 2005.

/s/ James K. Singleton, Jr.
JAMES K. SINGLETON, JR.
United States District Judge

A05-0206—CV (JKS) 12/13/05
/s/ BB ----------
P.GROVER (DAVIS)
S. COLLIER
J. SNYDER, III

Reviser's Notes
Congressional Record Service
80th Congress – 2d Session
Pages 1487 – 2174
Effective September 1, 1948

1948 Judicial Code Appendix

Page 1732

TITLE 28, UNITED STATES CODE

Section 132 – Section Revised

Based on title 28, U.S.C., 1940 ed., § 1, and section 641 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions (Apr. 30, 1900, ch.339, § 86, 31 Stat. 158; Mar, 3, 1909, ch. 269, § 1, 35 Stat. 838; Mar. 3, 1911, ch. 231, § 1, 36 Stat. 1087; July 30, 1914, ch. 216, 38 Stat. 580; July 19, 1921, ch. 42, § 313, 42 Stat. 119; Feb. 12, 1925, ch. 220, 43 Stat. 890; Dec. 13, 1926, ch. 6, § 1, 44 Stat. [9]19).

Section consolidates section 1 of title 28, U.S.C., 1940 ed., and section 641 of title 48, U.S.C., 1940 ed., with changes in phraseology necessary to effect the consolidation.

Subsection (c) is derived from section 641 of title 48, U.S.C., 1940 ed., which applied only to the Territory of Hawaii. The revised section, by extending it to all districts, merely recognizes established practice.

Other portions of section 1 of title 28, U.S.C., 1940 ed., are incorporated in sections 133 and 134 of this title. The remainder of section 641 of title 48, U.S.C., 1940 ed., is incorporated in sections 91 and 133 of this title.

1940 Edition
United States Code

Title 28. – Judicial Code and Judiciary
Page 2453

§ 1. (Judicial Code, section 1.) District Courts; judges; appointments and residence.

In each of the districts described in chapter five of this title there shall be a court called a district court, for which there shall be appointed one judge, to be called a district judge, except that in the District of Arizona, the District of Connecticut, ..., there shall be an additional district judge in each; in the Southern District of Florida, the District of Massachusetts, ..., there shall be two additional judges in each; in the Northern District of California, ..., there shall be three additional judges in each; in the Eastern District of Michigan there shall be four additional judges; in the Northern District of Illinois and the Eastern District of New York there shall be five additional judges in each; in the Southern District of California there shall be seven additional judges; and in the Southern District of New York there shall be eleven additional judges. ...

Every district judge shall reside in the district or one of the districts for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor. ...

Title 48 – Territories and Insular Possessions
Page 4173

§ 641. District court; sessions; powers; terms.

There shall be established in the Territory of Hawaii a district court, to consist of two judges, who shall reside therein and be called district judges, and who shall each receive an annual salary of $10,000. The two judges shall from time to time, either by order or rules of the court, prescribe at what times and in what classes of cases each of them shall preside.

The two judges may each hold separately and at the same time a session of the court (whether at the same or different terms of court, regular or special) and may preside alone over such session. The said two judges shall have the same powers in all matters coming before the court; and in case two sessions of the court are held at the same time, the judgments, orders, verdicts, and all proceedings of a session of the court, held by either of the judges, shall be as effective as if one session only were being held at a time.

Regular terms of said court shall be held at Honolulu on the second Monday in April and October, and special terms may be held at such times and places in said district as the said judges may deem expedient. (Apr. 30, 1900, ch. 339, § 86, 31 Stat. 158; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; July 9, 1921, ch. 42, § 313, 42 Stat. 119; Feb. 12, 1925, ch. 220, 43 Stat. 890; Dec. 13, 1926, ch. 6, § 1, 44 Stat. 919)

REPEAL

Repeal of inconsistent provisions; saving clause, see note under section 691 of this title.

Section 132 – Revised
List of Acts Sourced in Consolidation

Apr. 30, 1900, ch.339, § 86, 31 Stat. 158,
(Established in Territory of Hawaii a district court);

Mar, 3, 1909, ch. 269, § 1, 35 Stat. 838,
(An act for the Territories of Hawaii & Alaska);

Mar. 3, 1911, ch. 231, § 1, 36 Stat. 1087,
(There shall be a court called a district court within the several States);

July 30, 1914, ch. 216, 38 Stat. 580,
(Amendment to act of district courts within the several States);

July 19, 1921, ch. 42, § 313, 42 Stat. 119,
(With regard to the Territory of Hawaii);

Feb. 12, 1925, ch. 220, 43 Stat. 890,
(With regard to District Court of Hawaii);

Dec. 13, 1926, ch. 6, § 1, 44 Stat. [9]19,
(Certain judges of the United States and District of Columbia).

36 Stat 1167,
ch. 231, *Section 289*

Section 289. The circuit courts of the United States, upon the taking effect of this Act, shall be, and herby are abolished; and thereupon, on said date, the clerks of said courts shall deliver to the clerks of the district courts of the United States for their respective districts all the journals, dockets, books, files, records, and other books and papers of or belonging to or in any manner connected with said circuit courts; and shall also on said dated deliver to the clerks of said district courts all moneys, from whatever source received, then remaining in the hands or under their control as clerks of said circuit courts, or received by them by virtue of their said offices. The journals, dockets, books, files, records, and other books and papers so delivered to the clerks of the several district courts shall be and remain a part of the official records of said district courts, and copies thereof, when certified under the hand and seal of the clerk of the district court, shall be received as evidence equally with the originals thereof; and the clerks of the several district courts shall have the same authority to exercise all the powers and to perform all the duties with respect thereto as the clerks of the several circuit courts had prior to the taking effect of this Act.

Public Record of
Certificate of Political Status, Citizenship and Allegiance

Recorded in the Anchorage Recording District, Alaska No. 2007-067958-0.
Date: October 22, 2007; Personal description of the Holder of this Certificate: True name – Stephen Carroll Collier; Date of Birth – November 9, 1954; Location of Birth – San Francisco, California; Complexion – White; Race – Caucasian; Color of eyes – Blue; Color of hair – Brown; Height – 6 ft. 0 in.; Weight – 190 lbs.; Visible distinctive marks – None; Marital Status – Married; Nationality and Political Status - Californian, a native of the several States; Citizen Status: white citizen; and, American citizen; and, citizen of the United States of America; and, Natural Born Native and citizen of the foreign state of California domiciled in the territorial boundaries of Alaska.

I affirm, under oath, that the facts herein are true and correct under penalties of perjury and that the photograph affixed hereto is a current likeness of me. *I hereby declare*, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, State or sovereignty, of which I have been a citizen or subject, including any allegiance to or being clothed with, the fictional status of a "citizen of the United States" as a misnomer declared in the Civil Rights Act of 1866, 14 Stat. 27, as amended, including 42 U.S.C. §§ 1981, 1982, 1988 - codification being separate from the Laws of the United States; and, any use of the status of "citizen of the United States" is under the law of necessity; that I have not knowingly or intentionally waived any of my inalienable rights and birthright of

the Constitutional Republic; that I will support and defend the Constitution of the United States and Laws of the United States as amended by the qualified Electors of the several States against all enemies, either foreign or domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation or purpose of evasion, so help me God.

/s/ Stephen Carroll Collier

Sworn and subscribed before me on 10/22/07 a Notary Public. My commission expires on Oct. 26, 2009.

/s/ Sharon Rosa Kelly
Notary Public Signature

State of Alaska
Notary Public
SHARON ROSA KELLY
My commission expires: Oct. 26, 2009

Affidavit of Truth

I, Stephen Carroll Collier, a citizen of one of the several States, do hereby affirm under penalties of perjury that the Writ of Certiorari filed on November 20, 2007 to the Supreme Court of the United States exercising its Article III judicial powers under the Constitution of the United States contains facts from the public record or alleged therein are true and correct to the best of my ability. Dated this 20th day of November, 2007 in Anchorage, Alaska.

/s/ Stephen Carroll Collier

SEAL

Sworn and subscribed before me a Notary Public in and for the State of Alaska on this 20th day of November, 2007 in Anchorage, AK. My Commission expires on Oct. 26, 2009

/s/ Sharon Rosa Kelly
Signature of Notary Public

Affidavit of Truth

I, Jeanette Ueda Collier, a citizen of one of the several States, do hereby affirm under penalties of perjury that the Writ of Certiorari filed on November 20, 2007 to the Supreme Court of the United States exercising its Article III judicial powers under the Constitution of the United States contains facts from

the public record or alleged therein are true and correct to the best of my ability. Dated this 20th day of November, 2007 in Anchorage, Alaska.

/s/ Jeanette Ueda Collier

SEAL

Sworn and subscribed before me a Notary Public in and for the State of Alaska on this 20th day of November, 2007 in Anchorage, AK. My Commission expires on Oct. 26, 2009

/s/ Sharon Rosa Kelly
Signature of Notary Public